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PENNSYLVANIA WILDERNESS ACT OF 1984

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 1984.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany H.R. 5076]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (H.R. 5076) to designate certain areas in the Allegheny National Forest as wilderness and recreation areas, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

SHORT EXPLANATION

The bill, as reported by the Committee, would designate 2 areas (totaling approximately 9,705 acres) in the national forests in the State of Pennsylvania as wilderness areas and as components of the National Wilderness Preservation System. The bill provides for the Secretary of Agriculture to administer the areas designated as wilderness by the bill in accordance with the provisions of the Wilderness Act, to promptly file maps and legal descriptions of the designated areas with appropriate committees of Congress, and to make the maps and descriptions available for public inspection.

Further, the bill contains language to ensure that certain National Forest System lands in the State of Pennsylvania not designated as wilderness by the bill are released for such uses as are deemed appropriate through the national forest management planning process.

The bill would also designate approximately 23,100 acres in the Allegheny National Forest in the State of Pennsylvania as the Allegheny National Recreation Area. The bill provides for the Secretary to administer the national recreation area in accordance with the provisions of the bill, to promptly file a map and legal description of the national recreation area with appropriate committees of

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Congress, and to develop a comprehensive management plan for the recreation area. Federally-owned land in the national recreation area would be withdrawn from all forms of appropriation under the mineral leasing laws.

COMMITTEE AMENDMENT

The Committee amendment to the bill strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute. In addition to making technical and clerical changes, the substitute—

(1) incorporates the compromise release language agreed to earlier this year;

(2) authorizes the acquisition of oil, gas, and other mineral interests and scenic easements in the Allegheny Islands Wilderness area as well as in the Hickory Creek Wilderness area; and

(3) revises the provisions providing direction for management of the Allegheny National Recreation Area to eliminate subjective standards, to simplify and clarify the management direction, and to eliminate ambiguities.

PURPOSE AND NEED FOR LEGISLATION

H.R. 5076, as amended, has as its purpose the addition of two areas in the Allegheny National Forest in Pennsylvania to the National Wilderness Preservation System. In addition, the bill establishes an approximately 23,100-acre Allegheny National Recreation Area in order to preserve and enhance the recreational opportunities on certain national forest lands and on the Allegheny Reservoir. The bill also contains language to ensure that national forest lands not designated as wilderness are released for such uses as are deemed appropriate through the national forest land management planning process.

The legislation is the result of a review by the United States Department of Agriculture conducted during the period of 1977 through 1979 and termed the second roadless area review and evaluation (RARE II). That study examined the lands of the National Forest System nationwide and, through the final environmental impact statement issued by the Department of Agriculture in January 1979, recommended designation of certain of these lands as wilderness, including one of the areas that would be designated by the bill. Upon completion of RARE II in 1979, some 9,570 acres in the State of Pennsylvania were recommended for wilderness and another 23,200 acres for "further planning", which would included wilderness review.

WILDERNESS DESIGNATIONS

Presently there are no designated wilderness areas in Pennsylvania. The national forest lands that would be designated as wilderness by H.R. 5076 total approximately 9,705 acres. These consist of the Allegheny Islands and the Hickory Creek Wilderness.

Both of the areas designated as wilderness would become part of the National Wilderness Preservation System. They would be man-

aged by the Forest Service under provisions of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131–1136).

A description of the wilderness proposals of the bill follows:

Allegheny Islands Wilderness

This 368-acre proposal consists of seven islands in the Allegheny River which were recommended for wilderness by the Forest Service in RARE II. The islands are alluvial in origin and are characterized by river bottom forest, including all ages and sizes of trees some of which are virgin stands of timber with specimens over 4 feet in diameter. They also contain several species of plants that are rare in the rest of the Allegheny National Forest. Especially worthy of note are ferns reaching 6 to 7 feet in height. Otter and eagles winter on the islands and osprey stop during spring and fall migration. Wilderness status will ensure protection of the interesting and diverse plant and animal life on these islands and permit their management for appropriate recreation, conservation, and educational uses.

Hickory Creek Wilderness

This 9,337-acre wilderness proposal is ecologically diverse and interesting and is very popular for primitive recreation. Its terrain encompasses much of the watersheds East and Middle Hickory Creeks and Jack's Run, and its gentle, rolling lands are interlaced with bogs and beaver ponds. Some of the area is covered with hardwood forests, consisting of beech, hemlock, oak, hickory, and the rare and valuable black cherry. Elevations range from 1,273 feet to approximately 1,900 feet, making the landscape generally typical of most of northwestern Pennsylvania. Broad open meadows run along most of the Middle Fork and a portion of Jack's Run, making for interesting scenery when contrasted with the surrounding forest landscape. Wildlife is abundant, including such game species as deer, bear, and one of the largest turkey populations in the national forest. East Hickory Creek has been designated as a wilderness trout stream by the Pennsylvania Fish Commission. Outstanding opportunities for hiking and camping are found in this area, and because of the abundance of wildlife, the proposed wilderness can be expected to be an exceptional primitive recreation resource for fishermen and hunters.

The area was identified for further planning during the RARE II process. However, the Department of Agriculture does not object to its designation as wilderness since it is the most appropriate area to designate in terms of wilderness and other resource values.

Virtually all of the subsurface rights of this proposed wilderness area are privately owned, and it is only a matter of time before exploration and drilling for oil and gas will commence. Hickory Creek is small, and likely oil and gas development would impact the area in a manner inconsistent with its wilderness designation. The Western Pennsylvania Conservancy has obtained an option to purchase most of these rights and its intention is to sell such rights to the Forest Service. The bill authorizes the Secretary to acquire, with the consent of the owner, lands and interests in lands (including oil, gas, and other mineral interests and scenic easements) within both the Hickory Creek and Allegheny Islands Wilderness

areas, and the bill authorizes not more than $2 million to be appropriated for this purpose. This action will ensure that the outstanding wilderness resource of Hickory Creek, as well as Allegheny Islands, is protected from any future exploration and development.

The Hickory Creek proposal has several factors contributing to its value as a wilderness area: it is within 150 miles of over 13 million people in 5 States; no vehicular roads bisect the area; all access to the area will be peripheral, and the roads that form the boundary have a minimum of traffic; all surface lands within the boundary are National Forest System lands and no additional surface land acquisition will be necessary.

DESIGNATION OF NATIONAL RECREATION AREA

In addition to the wilderness proposals, section 6 of H.R. 5076, as reported by the Committee, establishes the Allegheny National Recreation Area (NRA) comprising approximately 23,100 acres. The proposed NRA is composed primarily of the RARE II Tracy Ridge, Cornplanter, and Allegheny Front roadless areas, which lie along the Allegheny Reservoir and River. These are beautiful, wild areas, and they are extremely popular for primitive and unconfined recreation, especially given their proximity to the Allegheny Reservoir and River. Developed campgrounds and other recreational facilities on the fringes of the areas enhance their current recreation use and recreation development potential.

In all three of the roadless areas making up the recreation area, the underlying mineral rights are privately owned. The mineral values in these areas are believed to be far greater than those in the proposed Hickory Creek Wilderness and could cost well in excess of $10 million to acquire (some estimates have put the cost at closer to $50 to $100 million). Therefore, wilderness designation is not a viable option.

Accordingly, as with other national forest areas where a combination of water and land based resources afford outstanding opportunities for recreation use, the bill establishes a national recreation area under which the area's recreation potential may be emphasized without precluding development of the mineral resources or compatible management of other resources.

The bill establishes two basic objectives with respect to the NRA. First, the NRA should be managed to preserve and enhance the existing primitive, semiprimitive, and developed recreation uses. The NRA designation does not specifically prohibit future road construction and timber harvesting in the currently roadless areas, but it is the Committee's intention that such uses should not be authorized unless the Forest Service determines that they will not impair planned or existing recreation uses or watershed and wildlife values. Of course, timber harvest or other activities necessary to control fire, insects, or disease may be permitted. Selective, salvage, or other types of logging may also be appropriate to maintain wildlife openings or for other purposes, but any such activity should be planned primarily to enhance recreation, wildlife, watershed, or similar values, and not for commercial reasons.

In addition, the Forest Service may wish to construct new trails, campgrounds or other facilities to accommodate increased recre-

ational demands. However, where possible, developed recreation facilities, such as permanent campgrounds, should be limited to those general areas where they already occur rather than in the more remote and wild areas. In considering recreational uses, the Forest Service should also avail itself of opportunities to promote combined water and land recreation in the interface between the Allegheny Reservior and River and the recreation area. An example of this might be designation and construction of primitive or semiprimitive campground facilities along the Reservior or River, or the expansion of existing developed campgrounds.

The overall emphasis should be on retaining and enhancing existing recreation uses, wildlife, and fish populations, and watershed and wild land conditions. Of course, hunting, fishing, and trapping will be permitted to continue in accordance with applicable Federal and State laws.

The second major objective of the NRA designation is to emphasize the need that all exploration for, and development of, mineral resources should be conducted in such a manner that disturbances to other values will be minimized. Where feasible and economically practicable, road construction should be avoided and alternate access utilized. If roads are deemed essential to exploration and development, their length, size, and standard should be limited to the minimum necessary to perform the tasks at hand consistent with sound environmental protection. Of course, the Committee recognizes the development of major oil and gas finds could necessitate basic changes in the existing wild character of the land, and nothing in the bill is intended to prohibit such changes where they are essential to proper, economic development of the mineral resource. The Committee expects, however, that mineral rights holders will work closely with the Forest Service to minimize adverse impacts, and consider mineral rights exchanges, limited purchases or other options such as slant drilling, helicopter access, etc., in cases where development would clearly have long-term adverse impacts on recreation, wildlife, fisheries, watershed, or other values.

The Committee recognizes the complex nature of the various privately owned mineral rights underlying the NRA. Some of the outstanding rights are owned without any deed restrictions from the Government. These outstanding mineral rights are subject to State and Federal environmental laws, but the Forest Service has limited control over their exercise. Other reserved mineral rights may be subject to various regulations of the Secretary of Agriculture for the protection of surface values. Clearly, there is no one regulatory scheme that can be made universally applicable to all mineral development to prevent impacts on the natural values of the NRA. The Forest Service will have the difficult task of balancing the rights of private mineral owners with the public purposes of protecting the natural values of the NRA. It is the Committee's intent that the Forest Service not regulate any private mineral owner to the point of a taking of private rights. On the other hand, the Committee expects the Forest Service and other involved government agencies to use their legal authorities under State and Federal law to maximize the achievement of the purposes for which the NRA is established.

The bill requires that the Forest Service prepare a management plan for the NRA which will guide in the achievement of the purposes for which the NRA was established. At the discretion of the Forest Service, the NRA plan can be prepared in conjunction with or incorporated into the forest plan for the Allegheny National Forest as required by the National Forest Management Act of 1976. The Committee intends that in preparing the plan, the Forest Service give particular attention to the exploration, development, and transportation of oil, gas, and other mineral resources, and to ways of minimizing adverse environmental impacts of such activities. Of particular importance is the protection of water quality in accordance with all Federal and State laws and regulations.

The plan for the NRA is to be prepared in accordance with the National Environmental Policy Act of 1969. Forest Service regulations for preparing forest plans under the National Forest Management Act require the preparation of an environmental impact statement with full public involvement. The Committee deems such procedures to be appropriate for the NRA plan.

SUFFICIENCY AND RELEASE LANGUAGE

Background

In 1924, when the U.S. Forest Service decided it should manage wilderness as one of the many uses to be made of the National Forest System, it established the Gila Wilderness Reserve in the Gila National Forest in New Mexico. The purpose was to keep some parts of the Nation's forests in the condition in which mankind had found them, both as scientific benchmarks against which civilization's works could be compared and as recreational refuges for people who wanted to temporarily get away from the stresses of civilization. During the next 40 years, the Forest Service administratively established more of these areas, mostly in the West, from which evidence of human technology and development are substantially excluded.

In 1964, this wilderness concept became national policy when Congress passed the Wilderness Act and established the National Wilderness Preservation System. That System incorporated the 9.1 million acres that had been set aside by the Forest Service over the previous 4 decades. Generally, the Wilderness Act specifies that within wilderness areas there will be no roads, no timber harvesting, no structures or installations, and no use of motor boats or landing of aircraft. Each wilderness area was to be an area where man was a visitor who did not remain.

The Wilderness Act gave the Forest Service 10 years to complete studies of the national forest primitive areas—areas temporarily reserved from access pending study of their suitability for wilderness designation. In addition, Congress provided that no future wilderness could be created in the national forests, except by Act of Congress. However, Congress did not preclude the management of lands within the National Forest System for primitive, roadless recreation, within the concept of multiple-use management.

As the Forest Service began its review of primitive areas within the national forests in the late 1960's to determine the suitability for wilderness designation of specific tracts, a number of problems

arose in connection with established timber management plans. In many forests, after new sales were advertised, administrative protests were filed, charging that a particular sale would violate the statutory concept of multiple use. Usually, the allegation was that the proposed sale was in an area that should be designated as wilderness or that should be devoted to unstructured recreation with no harvesting of timber. As timber sales became tied up in such appeals and the orderly management of the national forests disintegrated, the Forest Service instituted the first roadless area review and evaluation (RARE I) as the planning process to resolve the problems.

By 1973, RARE I had resulted in the selection of 274 wilderness study areas containing approximately 12.3 million acres. The other roadless areas in the RARE I inventory, having been considered and rejected for possible wilderness designation, were not protected as wilderness and remained in their full multiple-use status.

The National Environmental Policy Act (NEPA) became law on January 1, 1970. It required the Executive Branch, before making any major decision having a significant impact on the human environment, to prepare an assessment of the environmental impact of the proposed action. The NEPA was the basis of a lawsuit filed in 1972, as the RARE I process was nearing completion, that charged that the Forest Service must prepare environmental impact statements on roadless areas that were supposedly returned to multiple-use management. The Federal District Court for the Northern District of California agreed that the agency was subject to the decisionmaking process prescribed by NEPA, and all development activities on the roadless areas were stopped. See *Sierra Club* v. *Butz*, Civ. No. 72-1445-SC (N.D. Cal. 1972) 3 Environmental Law Reporter 20071.

As a result of restricted sources of timber supplies, tremendous pressures were placed on the remaining National Forest System lands that remained open to timber harvesting. In some forests, timber sale levels dropped dramatically below the allowable cuts. In other forests, timber sale levels were maintained, but sales were concentrated on lands outside the RARE I roadless areas. In these forests, the concentration of sales at the full sales volume on a limited area produced fears that these available areas would be overcut to the detriment of land and watersheds.

It was obvious that a remedy was needed for this situation, and the Forest Service decided that a faster planning process was the answer. Thus, the second roadless area review and evaluation (RARE II) was formulated to expedite the planning process for roadless areas. RARE II began in June 1977 and was intended to survey the roadless and undeveloped areas within the National Forest System and to distinguish areas suitable for wilderness designation from those most appropriate for other uses. The areas found suitable for wilderness would be recommended for addition to the National Wilderness Preservation System through congressional action. The remaining roadless lands would be allocated to nonwilderness uses determined under the mulitple-use planning process, or allocated to further study.

On April 16, 1979, President Carter made final recommendations to Congress based on the review of 2,919 identified roadless areas

encompassing 62 million acres in the National Forest System. The Administration recommended that wilderness designation be given to approximately 15.1 million acres of the original 62-million acre roadless inventory. Another 10.8 million acres of roadless lands were determined to require further planning before decisions were made on their future management. The balance of the areas, which totaled about 36 million acres, were allotted to nonwilderness, multiple-use management.

Much litigation has occurred since the RARE II recommendations. This has had a direct bearing on congressional consideration of wilderness legislation. In June 1979, the State of California challenged the RARE II wilderness and nonwilderness allocations on National Forest System lands in that State. *California* v. *Bergland,* 483 F. Supp 465 (E.D. Cal. 1980). The State and various environmental organizations which joined the lawsuit claimed that the RARE II final environmental impact statement was legally flawed. On January 8, 1980, the Federal district court agreed with the State's position, finding that the environmental statement for RARE II was deficient under the provisions of the National Environmental Policy Act. The Court ruled that a more site-specific analysis of wilderness qualities was required for 46 of the areas allocated for nonwilderness. Additionally, the Court found flaws in the RARE II analysis process. As a result, enjoined any development in the 46 disputed areas, pending preparation of an adequate environmental impact statement. The major points of the district court ruling were affirmed by the Ninth Circuit Court of Appeals. *California* v. *Block,* 690 F. 2d 753 (9th Cir. 1982).

The ruling by the Court of Appeals that the RARE II environmental impact statement was deficient had a significant impact on Forest Service activities. Although the decision applied specifically only to the 46 roadless areas in California, it was binding on other Federal district courts in the Ninth Circuit (comprising the State of California, Oregon, Washington, Idaho, Montana, Nevada, Arizona, Alaska, and Hawaii) and could be cited in States outside the Ninth Circuit's jurisdiction. The reasoning of the decision produces uncertainty regarding the RARE II study for other States. Management of roadless areas not designated as wilderness is subject to challenge through administrative appeals and lawsuits. In fact, such challenges have occurred. There have been three lawsuits filed in the Northwest that rely extensively on *California* v. *Block.* In *Earth First* v. *Block* (Civil No. 83-6298-ME-RE, D. Oreg.), the United States District Court for the District of Oregon enjoined the Forest Service from taking or permitting any action which would be inconsistent with the wilderness character of a roadless area in Oregon until the requirements of *California* v. *Block,* and the NEPA have been met. Similarly, in *Kettle Range Conservation Group* v. *Block* (Civil No. C-83-590-JLQ, E.D. Wash.), the Forest Service was enjoined from taking or permitting any action which will change the wilderness characteristics of four roadless areas in Washington. In December 1983, the Oregon Natural Resources Council brought suit against the Forest Service in an attempt to enjoin any activity which would impair the wilderness characteristics of approximately 2.25 million acres of roadless lands in Oregon until the requirements of NEPA have been met. That suit is pend-

ing. *Oregon Natural Resources Council* v. *Block,* Civil No. 83-1902, D. Oreg.

In February 1983, Assistant Secretary of Agriculture John B. Crowell, Jr., announced that all roadless areas studies for wilderness potential during RARE II would be subject to reevaluation. This reevaluation was to be done as a part of the National Forest System land management planning process then underway for 120 national forest planning units and scheduled for completion in 1985.

The desire to avoid further wilderness study and to preclude litigation directed at stopping the continuation of management activities on roadless areas led to a search for a legislative solution. Provisions termed "sufficiency" and "release" language were the outcome of that search. Such language has appeared in legislation designating wilderness areas in Colorado, New Mexico, Alaska, Missouri, West Virginia, and Indiana. That language, which was generally patterned after the Colorado wilderness bill, continued to trouble a number of affected industry groups, and in an effort to address their concerns, Congress developed and agreed on a new version of the so-called "release" language, which is included in the bill.

The status of National Forest System areas designated for further planning by RARE II and lying east of the 100th meridian was also placed in doubt by a case orignating in North Carolina. The Eastern Wilderness Act designated certain National Forest System lands as wilderness and designated other lands as wilderness study areas. That Act directed the Secretary of Agriculture to review the study areas for their suitability or nonsuitability for wilderness designation and to make recommendations to the President, including recommendations for wilderness study areas. In *Southern Appalachian Multiple Use Council* v. *Bergland,* (No. A-C-80-1, W.D. N.C.), a Federal disrtrict court ruled, in relying on the Eastern Wilderness Act, that the Secretary had no authority to administratively designate "further planning" areas (and thereby administratively withhold any management activities in the area pending the completion of the study and determination of the area's status), but only to *recommend* areas to be designated as wilderness study areas. The court also ruled that the Secretary could manage the areas recommended so as not to impair their suitability for wilderness, pending congressional action. The ruling had an effect on the land management planning process on eastern national forests (those affected by the provisions of the Eastern Wilderness Act) insofar as the evaluation of areas for wilderness suitability is concerned. Under the court's ruling, forest plans on national forests east of the 100th meridian cannot recommend areas for wilderness designation, rather they can only recommend to Congress that such areas be studied for their wilderness suitability.

Sufficiency and judicial review of the RARE II environmental statement

The bill contains language relating to the sufficiency of the RARE II final environmental impact statement. As previously discussed, the need for the language arises because of a Federal district court decision in *California* v. *Bergland, supra,* in which it

was held that the RARE II environmental impact statement, as it applied to 46 areas considered for wilderness in California, had insufficiently considered the wilderness alternative for the areas. Activities that would impair the wilderness characteristics of the areas were enjoined until subsequent reconsideration of wilderness was completed. This action creates uncertainty over the management of some nonwilderness areas, where administrative or judicial appeals could halt some activities until adequate environmental impact statements are prepared. The Committee, in considering the bill, has reviewed the roadless areas in Pennsylvania. It believes that the RARE II final environmental impact statement, insofar as National Forest System lands in Pennsylvania are concerned, is sufficient, and, therefore, the bill provides that such environmental statement shall not be subject to judicial review.

Release, management, and future wilderness consideration of nonwilderness areas

The RARE II process during 1977 through 1979 took place concurrently with the development by the Forest Service of a new land management planning process mandated by the National Forest Management Act of 1976 (NFMA). That process requires the national forest land management plans to be reviewed and revised periodically to provide for a variety of uses on the land. During the review and revision process, the Forest Service is required to study a broad range of potential uses and options for each national forest. NFMA provides that the option of recommending land to Congress for inclusion in the National Wilderness Preservation System is only one of the many options that must be considered during the planning process for those lands which may be suited for wilderness designation. The Forest Service is presently developing the initial, or "first generation", plan for each national forest. These are the so-called "section 6" plans, and they are scheduled for completion by September 30, 1985. Upon implementation, these plans will be in effect for 10 to 15 years before being revised and updated.

One of the goals of RARE II was to consider the wilderness potential of National Forest System roadless areas. The Committee believes that further consideration of the wilderness option during development of the initial plans for the National Forest System roadless areas in Pennsylvania, as defined in section 8 of the bill, and during the period when the initial plan is in effect, would be duplicative of studies and reviews that have already been made by both the Forest Service and Congress. Therefore, the bill provides that the RARE II evaluation or the reference to certain other lands constitutes an adequate consideration of the suitability of these roadless areas for inclusion in the National Wilderness Preservation System and no further review by the Department of Agriculture shall be required prior to the revision of the initial land management plan for the national forest. This provision is necessary to ensure that these lands will be considered as functioning units of the national forests and has the practical effect of releasing these lands for multiple uses other than wilderness.

The NFMA provides that a national forest management plan shall be in effect for no longer than 15 years before it is revised. The Forest Service regulations, however, provide that a forest plan

"shall ordinarily be revised on a 10-year cycle or at least every 15 years." (36 CFR 219.10(g)). The language of the bill tracks these regulations.

By tying future review of the wilderness option to revision of initial plans, the Committee intends to make it clear, consistent with the NFMA and current Forest Service regulations, that amendments to a plan, including those that might result in a significant change in a plan, would not trigger the need for reconsideration of the wilderness option. The wilderness option does not need to be reconsidered until the Forest Service determines (1) based on a review of the lands covered by a plan, that conditions in the area covered by a plan have changed so significantly that the entire plan needs to be compeletely revised, or (2) that the statutory 15-year maximum life span of the plan is expiring.

A revision of a forest plan is a costly undertaking in terms of dollars and manpower and the Committee does not expect such an effort to be undertaken lightly. When required by changing conditions, the Forest Service should make every effort to address local changes in land management plans through the amendment process, reserving the revision option only for major forest-wide changes in conditions.

For example, if a new powerline is proposed to be built across a forest, any modification of the applicable forest plan to permit the line to be built would be accomplished by an amendment, not a revision, and therefore the wilderness option would not have to be reexamined. It is only when a proposed change in management would significantly affect overall goals or uses for the entire forest that a revision would be made. An example of such a situation is the recent eruption of Mt. St. Helens. Because it affected so much of the land in the Gifford Pinchot National Forest, including the forest's overall timber harvest schedule, the necessary changes in the applicable forest plan would likely be considered a revision of the plan. In this regard, the Committee notes that in the vast majority of cases the 10- to 15-year planning cycle established by the NFMA and in the existing regulations is short enough to accommodate most changes in circumstances without triggering more frequent plan "revisions". It is highly unlikely that conditions will change so dramatically during the 10- to 15-year planning cycle that anything more comprehensive than a plan amendment would be required.

It is not likely that primitive, semiprimitive, or motorized recreation use would change so rapidly over an entire national forest that the Forest Service or the Federal courts would be justified in concluding that the conditions in the forest are so significantly changed as to justify making a plan revision prior to the normal 10- to 15-year life span for the existing plan. For example, recreation use might increase in a specific area or areas resulting in changed conditions in the forest itself. In the judgment of the Forest Service, such changes could be met by amending the plan, as opposed to revising it. This is not to say that an increase in demand for recreation in a given area will automatically, in and of itself, constitute a valid requirement for even a plan amendment. In addition, it is not the Committee's intent, nor, in the judgment of the Committee, the intent of any Federal statute, to force the

Forest Service into either plan amendments or revisions as a result of changes in use patterns in the national forests.

The Chief of the Forest Service has indicated that, in his view, most plans will be in existence for 10 years before they are revised. The Committee shares this view and anticipates that plans will not be revised in advance of their anticipated maximum life span absent extraordinary circumstances. The Committee understands and expects that the first generation plans will be completed by late 1985 in most cases and the time of revision for most plans will begin about 10 years from the date of implementation for each plan. Accordingly, the Committee expects that the wilderness option for any area will not be reexamined again until the plans have been in effect for 10 years, unless the area is specifically designated as a wilderness study area by Congress.

The Committee notes that administrative or judicial appeals may mean that some of the first generation plans will not actually be implemented until the late 1980's, and plan revisions would not take place until a 10-year period has elapsed from the date each plan is implemented. If the full 15 years allowed by NFMA elapses before a revision is made, the wilderness option may not in some cases be reviewed until the year 2000 or later.

The question has also arisen as to whether a revision would be triggered if the Forest Service is directed by the courts to modify or rework an initial plan, or if the Forest Service withdraws an initial plan to correct technical errors or to address issues raised by an administrative appeal. The Committee wants to make it as clear as possible that any reworking of an initial plan for such reasons would not constitute a revision of the plan and would not require the reconsideration of the wilderness option for the lands covered by the plan.

This position is based on the fact that court-ordered or administrative reworkings or modifications of a plan would most likely come about to resolve inadequacies in the preparation of the plan under the requirements of NFMA and other applicable laws. Since the NFMA, and the implementing regulations, specify that a plan revision will only occur when the Secretary finds that there has been a significant change in conditions in the forest planning unit, or at least once every 10 to 15 years, it is clear that such reworking or modification would not be a revision for at least two reasons: (1) the modification would not be the result of any significant change in conditions in the forest planning unit and (2) a plan must be properly prepared and implemented before it can be revised.

The fact that the wilderness option for roadless areas will be considered in the future during the planning process raises the hypothetical argument that areas not designated for wilderness must be managed to preserve their wilderness attributes so that they may be considered for such designation in the future. This interpretation, if accepted as correct, would result in all roadless areas being kept in "de facto" wilderness status indefinitely. Such a requirement would be detrimental to the orderly management of nonwilderness lands and the goals of the Forest and Rangeland Renewable Resources Planning Act of 1974.

To eliminate any possible misunderstanding on this point, the bill provides that areas not designated as wilderness need not be

managed for the purpose of protecting their suitability for future wilderness designation pending revision of the initial plans. The intent is that these lands be managed for multiple uses in accordance with the land management plan. Of course, the national recreation area shall be managed in accordance with the purposes set forth in the bill.

The Forest Service already has statutory authority to manage roadless areas for multiple uses other than wilderness. The Committee wishes to make clear, however, that study of the wilderness option in future generations of "section 6" plans is required only for those lands that may be suited for wilderness designation at the time of the development of such future plans. During the lifetime of each generation of plans, then, the forest land and other resources can, in fact, be put to the uses that are authorized in the plan. In short, one plan will remain in effect until the second plan is implemented, and the forest will be managed in accordance with the plan that is in effect, even if such management may result in the land no longer being suited for wilderness.

Thus, it is likely that areas evaluated for wilderness suitability in one generation of plans may not physically qualify for wilderness consideration by the time the next generation of plans is prepared. For example, the Committee notes that many areas that were studied for wilderness in the RARE II, recommended for nonwilderness, and released administratively in April of 1979, may no longer qualify as suitable wilderness study areas as a result of approved multiple-use activities having been carried out.

Under this provision, it is the Committee's intent and understanding that the Forest Service may conduct a timber sale in a roadless area being managed for multiple-use purposes other than wilderness and not be challenged on the basis that the area will be spoiled for consideration as wilderness in a future planning cycle. Once into a second-generation plan, the Forest Service may, of course, manage a roadless area according to that plan without the necessity of preserving the wilderness option for the third-generation planning process. Should the particular area still qualify for possible wilderness designation at the time of the third-generation planning process, which is likely in many cases, the wilderness option for the area would be considered at that time under the requirements of NFMA. In short, the wilderness option must be considered in each future planning generation for all of the areas in each planning unit that still possess the required wilderness attributes. There is no requirement, however, that these attributes be preserved for the purpose of maintaining the suitability of the affected areas for future evaluation as wilderness in the planning process.

In the Committee's judgment, the Forest Service is not required to manage multiple-use lands in a "de facto" wilderness manner. Of course, the Forest Service can, if it determines such action appropriate, manage lands to preserve their natural undeveloped characteristics if the applicable plan calls for such management. Likewise, the Forest Service can, if through the land management planning process it determines such action appropriate, provide for other multiple uses on lands that have not been designated as wilderness or as wilderness study areas by Congress. The Forest Serv-

ice should be able to manage all nonwilderness lands in the manner determined appropriate through the land management planning process.

However, the bill also provides that lands recommended for wilderness designation in future generations of land management plans must be managed to protect their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by NFMA, and other applicable law.

In arriving at this position, the Committee has carefully considered and balanced the wishes and concerns of many varied interest groups involved in this issue, and wishes to emphasize the vital importance of completing and implementing the forest plans in Pennsylvania and ending the state of uncertainty over appropriate land management that now exists in the national forests.

In order to eliminate the land management uncertainty with regard to as much of the National Forest System land in Pennsylvania as possible, the bill provides that the release and sufficiency provisions of the bill also apply to National Forest System Roadless lands in Pennsylvania that are less than 5,000 acres in size.

Committee Consideration

HEARING

On Thursday, May 24, 1984, the Subcommittee on Soil and Water Conservation, Forestry, and Environment, chaired by Senator Roger Jepsen, held a hearing on S. 2551 and H.R. 5076, the Pennsylvania Wilderness Act of 1984.

In his opening statement, Senator Jepsen noted that there are currently four eastern wilderness bills pending on the Senate Calendar. He said that since the compromise on the release language for the bills had been reached, he felt certain that the Committee and the Senate would be able to complete action on the other remaining wilderness bills in this session of Congress.

The first panel of witnesses to testify on S. 2551 and H.R. 5076 were members of the Pennsylvania congressional delegation.

Senators John Heinz and Arlen Specter sponsors of S. 2551, spoke in favor of the legislation. Both Senators pointed out the extraordinary effort that went into the formulation of this legislation and the benefits it will bring to residents and nonresidents of Pennsylvania. Senator Specter stated that the legislation does not represent victory or defeat for any special group—but a victory for Pennsylvania, its visitors, and the legislative process.

Congressman William F. Clinger, Jr., testified in favor of the legislation and stated that the legislation has the unanimous support of the Pennsylvania delegation in both Houses. He pointed out that the bill, a result of 10 years of deliberations, is a compromise that attempts to strike a balance between wilderness advocates and opponents. Mr. Clinger stated that the Senate report should contain language to permit trapping and activities to control insects, diseases, and fires in the proposed Allegheny National Recreation Area. Mr. Clinger also pointed out that the Senate bill should be amended to (1) include the House/Senate compromise release lan-

guage, and (2) broaden the language pertaining to the authorization of $2 million for mineral rights acquisition in the proposed Hickory Creek Wilderness Area to include authority for mineral rights acquisition in the proposed Allegheny Islands Wilderness.

Senator Jepsen asked if the Members of the Pennsylvania delegation were agreeable to the Senate/House compromise release language. They responded in the affirmative.

The next witness, J. Lamar Beasley, Deputy Chief for Programs and Legislation, Forest Service, testified for the Department of Agriculture and said the Department recommends enactment of H.R. 5076 or S. 2551, if amended in certain respects. He said both bills would establish two wildernesses: the Allegheny Island Wilderness and the Hickory Creek Wilderness, totaling slightly over 9,700 acres.

Mr. Beasley said the bill authorizes the purchase of interests, including oil, gas and other mineral interest, in lands in the Hickory Creek Area. Because of the size of Hickory Creek, and the likely development of these resources would impact the area in a manner inconsistent with wilderness designation. He noted that while the Administration generally does not support purchase of mineral interests, it would be essential in this case to acquire mineral interersts if Hickory Creek and Allegheny Islands were designated wilderness. Therefore, the Administration would support acquisitions of those interests in both of these areas subject to overall budget authorities and appropriations action. Two million dollars would be adequate for such purchases.

Mr. Beasley said the Administration opposes the establishment of a National Recreation Area (NRA) that is proposed in both the bills. The proposed NRA, having a total area of 23,100 acres, would be in two sections, approximately 15 miles apart. He stated that an NRA divided in two segments would be difficult to administer and confusing to the public. Very little of the mineral rights in the proposed NRA are owned by the United States, and all activities in the NRA are subject to valid existing rights. The Department believes the objectives described in the legislation can be met without the areas being designated as an NRA. The Department recommends that the proposal for the National Recreation Area be deleted from the bill.

Next to testify on the bills was a group consisting of John C. Oliver, III, President, Western Pennsylvania Conservancy, Pittsburgh, PA; Robert J. LaBar, Forest Resources Administrator, Hammermill Paper Company, Erie, PA; John A. Winieski, Chairman, Pennsylvania Division, Society of American Foresters, Dillsburg, PA; and Jeff Schmidt, Harrisburg Representative, Sierra Club, Harrisburg, PA.

John C. Oliver expressed his organization's strong support for the Pennsylvania Wilderness Act of 1984. He stated wilderness status will assure protection of the seven islands that make up the Allegheny Islands Wilderness and their interesting and diverse plant and animal life. Mr. Oliver said the Hickory Creek Wilderness Area was the centerpiece of the bill and the four factors which contribute to its value as an Eastern wilderness area are: accessibility; back of roads bisecting the area; all surface ownership in the United States; and the need and demand for wilderness. He ex-

pressed agreement with the $2 million authorization to cover the purchase of subsurface rights. Mr. Oliver said that the Conservancy usually supports multiple use, but in this instance one such use, timber harvest, cannot be accommodated in the Hickory Creek area. He stated that the Western Pennsylvania Conservancy was delighted with the compromise release language and urged favorable action on the bill.

Robert J. LaBar expressed his organization's concern with several areas of the legislation, including implications of clean air standards; oil, gas, and mineral rights; problems with land acquisition; and characteristics of national recreation areas. He said that one of the major concerns, release language, had been removed by the Senate/House compromise on this issue. Mr. LaBar did not indicate support for the legislation but expressed hope that the issues will be resolved this year.

John A. Winieski presented the views of the Pennsylvania Division of the Society of American Foresters. He said the Society passed resolutions that concurred with the original U.S. Forest Service RARE II report. He expressed the Society's position that the national recreation area should be deleted from the legislation. Mr. Winieski stated the Society's concern with the language dealing with acquisition authority. They would like any acquisition authority to be available only with the consent of the owners, rather than by eminent domain. They also questioned the inclusion of the term "wilderness" in the provisions relating to administration of the national recreation area. Such use would conflict with the other intended uses, which are basically management uses. Another concern is the lack of language which would authorize the Secretary of Agriculture to manage, utilize, and dispose of natural resources in the NRA.

Jeff Schmidt said he believes the legislation represents a true compromise. He agreed with Representative Clinger that the national recreation area is critical to the legislation. He stated support for the Senate/House compromise release language and urged prompt passage of the legislation.

Senator Jepsen questioned the witnesses as to their positions on Mr. LaBar's suggestion for NRA acquisitions to be accomplished only between "a willing buyer" and "a willing seller". Mr. Oliver stated that it would be fine as far as they were concerned. Mr. Schmidt stated that he would need to check with his organization before commenting. Mr. Winieski said he agreed with it.

Committee Markup

The Committee met in open session on Thursday, September 13, 1984, to consider H.R. 5076.

In his opening statement, Chairman Helms noted that the Pennsylvania wilderness bill was just one of six bills to be considered by the Committee that would add new areas to the National Wilderness Preservation System. Consideration of these bills, together with the four wilderness bills considered by the Committee and signed into law earlier this year, indicates that the Committee takes seriously its responsibility to provide clear directions for forestry policy regarding wilderness and other matters. Chairman

Helms noted that the preservation of these additional wilderness areas will leave a legacy that will provide unlimited opportunity for primitive recreation and enjoyment for those choosing to visit the areas.

Senator Huddleston questioned the Forest Service on their efforts to obtain the privately-held mineral rights on existing wilderness areas and whether the exercise of those rights is a growing problem. Douglas MacCleery, Deputy Assistant Secretary for Natural Resources and Environment of the Department of Agriculture, responded that since most of the national forest lands in the eastern United States were acquired from private owners who retained the subsurface mineral rights, it would be very expensive to acquire all of those rights, and the Forest Service does not buy those rights when it makes new acquisitions. The Forest Service deals with this issue on a case-by-case basis, and if a private owner elects to exercise his mineral rights, the Forest Service looks at the impact it might have on the wilderness value and makes a decision as how best to proceed. This factor is also taken into consideration when the Department makes recommendations on which areas are appropriate for wilderness designation.

After a brief explanation of the bill, Chairman Helms, offered an amendment that would make several changes in the bill. In addition to making technical and clerical changes, the amendment would—

(1) incorporate the compromise release language agreed to earlier this year;

(2) authorize the acquisition of oil, gas, and other mineral interests and scenic easements in the Allegheny Islands Wilderness area as well as in the Hickory Creek Wilderness area; and

(3) revise the provisions providing direction for management of the national recreation area to eliminate subjective standards, to simplify and clarify the management direction, and to eliminate ambiguities.

The amendment was adopted by voice vote.

By voice vote, the Committee ordered H.R. 5076 reported, as amended, with a recommendation that it pass.

Section-by-Section Analysis

Short title

Section 1 provides that the bill may be cited as the "Pennsylvania Wilderness Act of 1984".

Findings

Section 2 contains congressional findings to the effect that there is an urgent need to identify and protect natural areas suitable to meet the recreational needs of Americans, certain lands within the Allegheny National Forest are worthy of inclusion in the National Wilderness Preservation System, and certain other lands within that forest are suitable for designation as a national recreation area.

Purpose

Section 3 provides that the purpose of the bill is to establish two wilderness areas and to establish the Allegheny National Recreation Area to prevserve and protect the area's natural values, enhance recreational opportunities, and ensure that mineral exploration and development are conducted in an environmentally sound manner.

Wilderness designation

Section 4 designates certain National Forest System lands in Pennsylvania, totaling approximately 9,705 acres, as wilderness and as components of the National Wildlife Preservation System as follows:

(1) approximately 368 acres within Allegheny National Forest, Pennsylvania, as generally depicted on a map entitled "Allegheny Islands Wilderness—Proposed", dated March 1984, which shall be known as the Allegheny Islands Wilderness; and

(2) approximately 9,337 acres within the Allegheny National Forest, Pennsylvania, as generally depicted on a map entitled "Hickory Creek Wilderness—Proposed", dated March 1984, which shall be known as the Hickory Creek Wilderness.

Administration of wilderness

Section 5(a) requires that, subject to valid existing rights, each of these areas designated as wilderness by the bill be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act, except that any reference in those provisions to the effective date of that Act would be deemed to be a reference to the date of enactment of the bill.

Section 5(b) provides that, as provided in section 4(d)(8) of the Wilderness Act, nothing in the bill is to be construed as affecting the jurisdiction or responsibilities of the State of Pennsylvania with respect to wildlife and fish in the Allegheny National Forest.

Section 5(c) authorizes the Secretary to acquire by purchase, donation, or exchange, with donated or appropriated funds, such lands or interests in lands (including oil, gas, and other mineral interests and scenic easements) within the two wilderness areas designated by the bill as the Secretary deems necessary to carry out the purposes of the bill. The lands and interests could only be acquired with the consent of the owner. Not more than $2 million would be authorized to be appropriated for this purpose.

Allegheny National Recreation Area

Section 6(a) designates approximately 23,100 acres in the Allegheny National Forest, Pennsylvania, which are generally depicted on a map entitled "Allegheny National Recreationn Area—Proposed", dated March 1984, as the Allegheny National Recreation Area. The Secretary may revise the boundaries of the national recreation area to correct errors or to include additional lands acquired adjacent to the area.

Section 6(b) provides that the national recreation area shall be managed for the purposes of—

(1) outdoor recreation, including, but not limited to, hunting, fishing, hiking, backpacking, camping, nature study, and the use of motorized and nonmotorized boats on the Allegheny Reservoir;

(2) the conservation of fish and wildlife populations and habitat;

(3) the protection of watersheds and the maintenance of free flowing streams;

(4) the conservation of scenic, cultural, and other natural values of the area; and

(5) the development of oil, gas, and mineral resources subject to reasonable conditions prescribed by the Secretary under subsection (c) for the protection of the area.

Section 6(c) provides that the Secretary is to administer the national recreation area in accordance with the purposes described in subsection (b) and the law, rules, and regulations applicable to the National Forest System. Subjects to valid existing rights, and activity associated with the exploration, development or transportation of oil, gas, or other minerals shall be subject to such reasonable conditions as the Secretary may prescribe to achieve the purposes, described in subsection (b), of the national recreation area. For any such activity, the Secretary must require a plan of operations which is to include provisions for adequate reclamation.

Section 6(d) requires the Secretary to prepare a management plan for the recreation area, which may be prepared in connection with ongoing planning for the Allegheny National Forest. Any plan is to be done in accordance with the National Enviromental Policy Act of 1969.

Section 6(e) requires the Secretary to permit hunting, fishing, and trapping in the recreation area in accordance with applicable Federal and State laws except that the Secretary may designate certain zones where, or periods when, no hunting, fishing, or trapping would be permited. Except in emergencies, any prohibitions or restrictions may be put into effect only after consultation with the appropriate State fish and game department.

Section 6(f) provides that, subject to valid existing rights, federally-owned lands in the national recreation area are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing, including geothermal leasing.

Maps and descriptions

Section 7 requires that, as soon as practicable after enactment of the bill, maps and legal descriptions of the wilderness areas and the national recreation area designated in the bill be filed by the Secretary of Agriculture with the House Committees on Agriculture and on Interior and Insular Affairs and with the Senate Committee on Agriculture, Nutrition, and Forestry. In addition, this section provides that the maps and descriptions shall have the same force and effect as if included in the bill, except that correction of clerical and typographical errors may be made by the Secretary. The maps and descriptions must be on file and available for public inspection in the Office of the Chief of the Forest Service.

Effect of RARE II

Section 8(a) contains congressional findings to the effect that the Department of Agriculture has completed the second roadless area review and evaluation (RARE II) and that Congress has made its own evaluation of National Forest System roadless areas in Pennsylvania, including reviewing the environmental impacts associated with alternative uses of these areas.

Section 8(b) provides that Congress determines and directs, with respect to the National Forest System lands in Pennsylvania, that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Pennsylvania, such final environmental statement shall not be subject to judicial review;

(2) to the extent such lands were reviewed in the RARE II or otherwise referenced in subsection (d), the RARE II review and evaluation or reference shall be considered to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System for the purposes of the initial land management plans required by law. Also, the Department shall not be required to review the wilderness option when the plans are revised, which revisions will ordinarily occur on a 10-year cycle, or at least every 15 years, unless, prior to that time, the Secretary finds that conditions in a unit have significantly changed.

(3) to the extent such lands were reviewed in the RARE II final environmental statement, or otherwise referenced in subsection (d) and not designated as wilderness or for special management under section 6 of the bill, such nondesignated lands shall be managed for multiple-use purposes in accordance with land management plans under section 6 or the Forest and Rangeland Renewable Resource Planning Act of 1974, except that such lands need not be managed to protect their suitability for wilderness designation prior to or during revision of the initial land management plans; and

(4) in the event that revised land management plans are implemented, areas not recommended for wilderness designation in any such revisions need not be managed to protect their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed to protect their suitability for wilderness designation as may be required by applicable law.

Section 8(c) provides that, as used in the bill and in section 6 of the Forest and Rangeland Resources Planning Act of 1974, as amended, the term "revision" does not include an "amendment" to a plan.

Section 8(d) provides that the release provisions of the section also apply to National Forest System roadless lands in Pennsylvania that are less than 5,000 acres in size.

Buffer zones

Section 9 provides that Congress does not intend that the designation of a wilderness area under the bill lead to the creation of protective perimeters or buffer zones around such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness is not to preclude such activities or uses up to the boundary of the wilderness area.

ADMINISTRATION VIEWS

On June 1, 1984, Chairman Helms received a report from Secretary of Agriculture John R. Block expressing the Department's support for the enactment of S. 2551 (the Senate companion bill to H.R. 5076) if amended as suggested in the report. This report, along with the portion of the May 24, 1984, testimony to the Subcommittee on Soil and Water Conservation, Forestry, and Environment presented by Mr. J. Lamar Beasley, Deputy Chief for Programs and Legislation of the Forest Service, on S. 2551 follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, June 1984.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 2551, a bill "To designate certain areas in the Allegheny National Forest as wilderness and recreation areas."

The Department of Agriculture recommends that the bill be enacted if amended as suggested herein.

S. 2551 would establish two wildernesses--the Allegheny Islands Wilderness and the Hickory Creek Wilderness, totaling approximately 9,700 acres. The bill would also establish a 23,100-acre Allegheny National Recreation Area (NRA). An appropriation authorization of $2 million for acquisition of lands and interest in lands is provided for the proposed Hickory Creek Wilderness.

The Allegheny Islands were recommended for wilderness designation in the RARE II Final Environmental Impact Statement which was issued in 1979. This area comprises approximately 360 acres scattered among seven islands on the Allegheny River. The Department supports designation of the Allegheny Islands as wilderness.

The 9,340-acre Hickory Creek area was identified for further planning during the RARE II process. We are currently studying the wilderness suitability of this area as part of the Forest planning process. A major question in the area is how to deal with outstanding private oil and gas interests.

We would prefer to complete Forest planning before making recommendations on wilderness suitability of Hickory Creek. However, for the following reasons, we do not object to its designation as wilderness. There is presently no designated wilderness in Pennsylvania, and this is the most appropriate area to designate in terms of wilderness and other resource values. In addition, we have spe-

cific appraisal data to support the authorization figure in the bill, and the costs are relatively modest.

The bill authorizes purchase of interests in lands in Hickory Creek including oil, gas, and other mineral interests. Hickory Creek is small, and likely oil and gas development on Hickory Creek would impact the area in a manner which would be inconsistent with its wilderness designation. While the Administration generally does not support purchase of mineral interests, it would be essential to acquire the mineral interests on Hickory Creek and Allegheny Islands if they are designated for wilderness. It is our understanding that the Western Pennsylvania Conservancy has an option to purchase the mineral interests for the majority of the Hickory Creek area with the objective of selling them to the United States. We would support acquisition of these interests subject to overall budget authorities and appropriation action. An appraisal has been completed. Indications are that the purchase authorization in the bill would be adequate for purchase of the mineral interests in both Hickory Creek and Allegheny Islands.

We oppose establishment of the NRA proposed in S. 2551. The NRA would include the Cornplanter, Allegheny Front, and Tracy Ridge areas studied in the RARE II process as well as the northern portion of the Allegheny Reservoir (filled in 1964 by Corps of Engineers for flood control) for a total of 23,100 acres. The NRA would be in two sections approximately 15 miles apart. Very little of the mineral estate in the proposed NRA is in United States ownership, and all activities in the NRA are subject to valid existing rights.

We understand that the proposal for a NRA was a result of trying to blend the needs for economical oil and gas development with the desire for specific types of recreation uses. This is basically how the area is currently being managed and will likely be managed in the future. We would prefer to accomplish this blending of recreation use and mineral development through the Forest planning process which provides for extensive public participation. An NRA divided into two segments would be difficult to administer and confusing to the public. Establishing an NRA creates a public presumption that commodity resources will not be developed and that much more intensive and costly recreation development will occur than is likely. Thus, we strongly recommend that the proposal for the NRA be deleted from the bill.

We recommend the new Senate-House compromise release language be added to this bill.

We estimate that the $2 million authorization would be needed to acquire lands and interests in lands in the Hickory Creek and Allegheny Islands Wildernesses. We estimate that an additional $100,000 would be needed for surveying, planning, and related activities for the proposed wildernesses and $100,000 for the NRA if it is retained in the bill.

The Office of Management and Budget Advises that there is no objection to the Presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

STATEMENT OF J. LAMAR BEASLEY, DEPUTY CHIEF, PROGRAMS AND LEGISLATION, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Before the Subcommittee on Soil and Water Conservation, Forestry and Environment, Committee on Agriculture, Nutrition and Forestry, United States Senate

Concerning S. 2590/H.R. 4263, S. 2551/H.R. 5076, S. 2598/H.R. 3788 and S. 1754, May 24, 1984

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to join with the Subcommittee in its deliberation of several bills that would designate portions of the National Forests in Tennessee, Pennsylvania and Texas as components of the National Wilderness Preservation System. With the exception of the sufficiency and release language, the House-passed bills are nearly identical to their Senate counterparts. The House-passed bill H.R. 3788, designating wilderness in Texas, contains the recently adopted Senate-House compromise language on release of nonwilderness areas. We prefer that language over that in the introduced Senate versions and urge its incorporation into the Pennsylvania and Tennessee bills.

S. 2551/H.R. 5076—The "Pennsylvania Wilderness Act of 1984"

S. 2551 and H.R. 5076 represent a Statewide designation of certain National Forest System lands within Pennsylvania for inclusion in the National Wilderness Preservation System. The bills would also designate an additional area as a National Recreation Area.

The Department recommends enactment of H.R. 5076 if amended as described in my testimony. Both bills would establish two wildenesses—the Allegheny Islands Wilderness, and the Hickory Creek Wilderness—totaling, 9,708 acres.

The Allegheny Islands were recommended for wilderness designation in the RARE II Final Environmental Impact Statement which was issued in 1979. This area comprises approximately 368 acres scattered among seven islands in the Allegheny River. The islands include all ages and sizes of trees including virgin stands with specimens over 4 feet in diameter. Extremely dense herbaceous undergrowth also occurs with ferns reaching 6–7 feet in height. The Department supports designation of the Allegheny Islands as wilderness.

The 9,340-acre Hickory Creek area was identified for further planning during the RARE II process. We are currently studying the wilderness suitability of this area as part of the Forest planning process. Hickory Creek is characterized by a mixed hardwood forest on relatively gentle terrain. A variety of wildlife inhabit the area.

We would prefer to complete Forest planning before making recommendations on wilderness suitability of Hickory Creek. However, for the following reasons, we do not object to its designation as wilderness. There is presently no designated wilderness in Pennsylvania, and this is the most appropriate area to designate in terms of wilderness and other resource values. In addition, we have spe-

cific appraisal data to support the authorization figure in the bill, and the costs are relatively modest.

The bill authorizes purchase of interests in lands in Hickory Creek including oil, gas, and other mineral interests. Hickory Creek is small, and likely oil and gas development on Hickory Creek would impact the area in a manner inconsistent with its wilderness designation. While the Administration generally does not support purchase of mineral interests, it would be essential to acquire the mineral interests on Hickory Creek and Allegheny Islands if they are designated for wilderness. It is our understanding that the western Pennsylvania Conservancy has an option to purchase the mineral interests for the majority of the Hickory Creek area with the objective of selling them to the United States. We would support acquisition of these interests, subject to overall budget authorities and appropriation action. An appraisal has been completed. Indications are that the purchase authorization of $2 million in the bill would be adequate for purchase of the mineral interests in both Hickory Creek and Allegheny Islands.

We oppose establishment of the National Recreation Area (NRA) proposed in H.R. 5076 and S. 2551. The NRA would include the Cornplanter, Allegheny Front, and Tracy Ridge areas studied in the RARE II process as well as the northern portion of the Allegheny Reservoir (filled in 1964 by Corps of Engineers for flood control) for a total of 23,100 acres. The National Recreation Area would be in two sections approximately 15 miles apart. Very little of the mineral estate in the proposed National Recreation Area is in United States ownership, and all activities in the National Recreation Area are subject to valid existing rights.

We understand that the proposal for a National Recreation Area was a result of trying to blend the needs for economical oil and gas development with the desire for specific types of recreation uses. This is basically how the area is currently being managed and will likely be managed in the future. We believe the objectives described in the bill can be met without designation as a National Recreation Area. A National Recreation Area divided into two segments would be difficult to administer and confusing to the public. Establishing an NRA creates a public presumption that commodity resurces will not be developed and that much more intensive and costly recreation development will occur than is likely. Thus, we strongly recommend that the proposal for the National Recreation Area be deleted from the bill.

Again, we recommend the new Senate-House compromise release language be added to the bills.

COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that the enactment of H.R. 5076 would result in a cost to the Federal Government of approximately $200,000 over the next 5 fiscal years for surveying, planning, and related activities to implement the wilderness and recreation area designations, and $2 million to acquire lands and interests in lands in the new wilderness areas. In addition, receipts from the sale of timber could be reduced by less than $80,000 per

year. Small savings in land management planning costs over the next 3 years will result from certain areas being released from further wilderness review during the period of the initial land management plans.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate, which is consistent with the Committee's cost estimate:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 17, 1984.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry, United States Senate, 328A Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5076, the Pennsylvania Wilderness Act of 1984, as reported by the Senate Committee on Agriculture, Nutrition and Forestry, September 13, 1984.

This bill adds 9,705 acres of land in Pennsylvania to the national wilderness preservation system and designates 23,100 acres of land in the Allegheny National Forest, Pennsylvania as the Allegheny National Recreation Area. Based on information from the National Forest Service (NFS), it is estimated that costs to the federal government for surveying, planning and related activities necessary to implement the wilderness withdrawal and recreation area designation will be approximately $200,000 over the five fiscal years beginning with 1985.

The bill also authorizes the Secretary of Agriculture to acquire by purchase, donation, or exchange, with donated or appropriated funds, certain lands or interests in lands in the newly created wilderness areas and authorizes the appropriation of up to $2.0 million for this purpose. Assuming the full amount authorized is appropriated, the NFS estimates that all of those funds will be spent by the end of fiscal year 1986.

According to the provisions of the National Wilderness Preservation System Act, all timber in areas designated as units of the national wilderness preservation system is removed from the timber base of the national forest in which it is located. This results in a reduction of the annual potential yield of the forest. The annual loss of timber receipts resulting from this bill is expected to be less than $80,000 per year.

All roadless areas in national forests not designated as wilderness or expressly excluded from further review by an act of the Congress are currently being reevaluated for their suitability for inclusion in the national wilderness preservation system. H.R. 5076 removes from this review all roadless areas in Pennsylvania included in the Department of Agriculture's Second Roadless Area Review and Evaluation (RARE II) during the period of the initial land management plan. This will result in a small savings in land management planning costs over the next three years.

Enactment of this bill would not significantly affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Eric Hanushek
(For Rudolph G. Penner, Director.)

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 5076. The bill would designate certain lands in the State of Pennsylvania as components of the National Wilderness Preservation System. It would also designate certain lands in that State as a national recreation area.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

Subject to valid existing rights, the Wilderness Act prohibits future harvesting of timber and future entry for mineral extraction on lands included in the National Wilderness Preservation System. Enactment of the bill will result in approximately 9,705 acres being placed in the National Wilderness Preservation System, and, thereby, will restrict uses other than wilderness on such land. Certain restrictions on uses will also apply in the national recreation area.

Wilderness designation will result in restricting private individuals' motorized use of public lands. Activities which have previously occurred, such as firewood gathering, motorized access for hunting and fishing, and trail bike riding, will be terminated.

A wilderness permit may be required of individuals using certain wilderness areas and, therefore, limited personal information would be collected in administering the program. It is anticipated that the impact on personal privacy would be minimal.

The bill will not result in any significant additional paperwork or recordkeeping requirements.

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Calendar No. 1198

98TH CONGRESS
2d Session

SENATE

REPORT
98-617

FEDERAL GRAIN INSPECTION PROGRAM AMENDMENTS

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 1984.—Ordered to be printed

Mr. HELMS, from the Committee of Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany H.R. 5221]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (H.R. 5221) to extend through September 30, 1988, the period during which amendments to the United States Grain Standards Act contained in section 155 of the Omnibus Budget Reconciliation Act of 1981 remain effective, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

SHORT EXPLANATION

The bill extends, through September 30, 1988, the current statutory authority under which the Federal Grain Inspection Service collects fees to cover the costs of the Service in providing official inspection and weighing of grain, including administrative and supervisory costs.

The bill authorizes the Secretary of Agriculture (i) to invest fee income received under the United States Grain Standards Act and income from late payment penalties and the sale of samples in insured or fully collateralized, interest-bearing accounts or (ii) to request that the Secretary of the Treasury invest the income in United States Government debt instruments.

The bill increases from 35 to 40 percent the percentage of the Federal Grain Inspection Service's expenditures that may be devoted to administrative and supervisory expenses and extends this percentage limitation through September 30, 1988.

The bill also authorizes, through September 30, 1988, the appropriation of such sums as are necessary to carry out the provisions of the United States Grain Standards Act, to the extent that fi-

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nancing is not obtained through fees, charges, sales of samples, and interest and extends through that same date the statutory requirement that an advisory committee be established to advise the Administrator of the Federal Grain Inspection Service on the implementation of the United States Grain Standards Act.

Lastly, the bill prohibits the Secretary from establishing a new class of wheat, designated as "Red Wheat". The Administrator of the Federal Grain Inspection Service had proposed such a class as part of a rulemaking proceeding published on pages 1730–35 of the January 13, 1984, edition of the Federal Register.

Purpose and Need

The Federal Grain Inspection Service (FGIS) was established in 1976 to carry out the provisions of the United States Grain Standards Act. The purpose of that Act is to ensure the integrity of the inspection, weighing, and handling of American grain.

The mission of FGIS is to establish official United States type and quality standards for grain and to promote the uniform application of these standards by official inspection personnel, to provide an official inspection system for grain, and to regulate the weighing and the certification of the weight of grain shipped in interstate or foreign commerce, as authorized by the United States Grain Standards Act. Thus, FGIS aids in the orderly and efficient marketing and distribution of U.S. grain from the Nation's farms to domestic and foreign buyers.

The Omnibus Budget Reconciliation Act of 1981 amended the United States Grain Standards Act to require the collection of user fees to pay for the supervision and administration of the official grain inspection and weighing program which was previously funded through appropriations. The 1981 Budget Reconciliation Act amendments also established a FGIS Advisory Committee to give the Administrator advice on the efficient and economic implementation of the United States Grain Standards Act, limited the supervisory and administrative costs of the program to 35 percent of the total inspection and weighing costs, and authorized appropriations through September 30, 1984, for standardization, compliance, foreign monitoring, and other activities to the extent financing is not obtained through fees and sales of samples.

The bill, as reported by the Committee, essentially extends for 4 years, through September 30, 1988, these amendments to the United States Grain Standards Act that were adopted in the Omnibus Budget Reconciliation Act of 1981 and which would otherwise expire September 30, 1984.

The principal provision of the bill extends the requirement for the collection of user fees to cover administrative and supervisory costs related to official grain inspection and weighing. The implementation of user fees, and input by the Advisory Committee, have resulted in increased efficiency of program adminstration and a more cost-effective delivery of program services. Staffing levels have been reduced to less than 900 full-time permanent employees, down from over 1,770 on September 30, 1980. The user-fee provision has resulted in a reduction of Federal outlays for the Federal Grain Inspection Service from approximately $24 million in fiscal

year 1981 to approximately $6.9 million in the current fiscal year. User fees funded approximately 87 percent of total agency activity in fiscal year 1983. Federal Grain Inspection Service funding that is provided through appropriations represents the costs of services which benefit the general public, such as compliance and standardization activities, international monitoring, and the FGIS Advisory Committee. The Congressional Budget Office estimates that because of the extension of the user fee authority, the bill will save $53 million in Government outlays over a 4-year period.

The amendments made by the Omnibus Budget Reconciliation Act of 1981 imposed a 35 percent limitation on administrative and supervisory costs incurred in connection with inspection and weighing programs. Though these costs have been substantially reduced in the past several years, the Committee believes continuation of a limitation on such costs is necessary.

The Committee is aware, however, that the current 35 percent limitation (increased by the bill to 40 percent) has hindered the effective management of the FGIS program. The volume of work varies seasonally, and, at times, fixed program costs have exceeded 35 percent during certain periods. Since the volume of grain moving through the marketing channels has decreased in recent years, administrative and supervisory costs as a percentage of total costs have increased. This occurs because of the need to maintain facilities and a cadre of technically qualified personnel to ensure that professional services are available and provided when needed. Under the 35 percent limitation, highly trained employees may be discharged only to be rehired again, if they are available, when the workload increases, or new employees hired and trained. The Committee believes that increasing the cap on administrative and supervisory costs from 35 to 40 percent will promote effective management of the FGIS programs and still provide an effective limit on growth of the agency.

Another provision which is extended by the bill is the requirement for the establishment of an advisory committee constituted of experts in the industry to advise the Administrator of FGIS in the implementation of the Act. The Committee believes that the beneficial work of the Advisory Committee should be continued.

Under current practice, the FGIS revolving fund, consisting of user fees paid for services rendered to the grain industry, has been maintained in a United States Treasury account until needed by FGIS to pay its operating expenses. The Committee believes that the Secretary of Agriculture should be permitted to invest user fee moneys collected from the industry in insured or collateralized, interest-bearing accounts or in United States Government debt instruments. The bill would permit this. This change would result in grain industry-paid user fees being treated in a manner similar to user fees collected by the Government in connection with warehouse examination programs, as well as cotton classing and various other inspection or grading programs for agricultural commodities such as meat, poultry, eggs, fruits, and vegetables, under the Agricultural Marketing Act of 1946. This change would put the grain inspection and weighing program on a basis comparable with these other programs, provide additional revenues for FGIS operations,

and reduce the need for the agency to increase user fee charges or request additional appropriations.

Section 3 of the bill prohibits the establishment of a new class of wheat, designated "Red Wheat", as was proposed by the Administrator of the Federal Grain Inspection Service in volume 49 of the Federal Register, pages 1730–35, on January 13, 1984. The Committee is concerned that establishing this new class of wheat could result in some types of Hard Red Winter Wheat being discounted to a lower price. Representatives of the grain industry have stated that establishment of an eighth wheat class would disrupt the wheat market. The Committee notes that the Department of Agriculture indicated in a notice published in the Federal Register on May 16, 1984, that the Department had decided not to establish a new "Red Wheat" class as previously proposed. The Committee supports FGIS's ongoing efforts to formulate standards for new varieties of wheat, when the new varieties' visual characteristics vary from their milling characteristics.

Committee Consideration

HEARING

On Thursday, April 12, 1984, the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices held a hearing on S. 2546, the Senate companion bill to H.R. 5221, relating to user fees for grain inspection and weighing services. The hearing was chaired by Senator Mark Andrews.

In his opening statement, Senator Andrews stated that the intent of S. 2546 was to extend through fiscal year 1988 the current authority of the Department of Agriculture to collect fees from users to cover the costs of providing official grain inspection and weighing services, including supervision of inspection and weighing by State and private agencies.

Senator Huddleston, in a statement submitted for the record, encouraged the Committee to act expeditiously on this matter to avoid any possible disruption in the functioning of the national grain inspection and weighing system.

The first witness was Dr. Kenneth A. Gilles, Administrator of the Federal Grain Inspection Service, who testified on behalf of the Department of Agriculture. Dr. Gilles stated that the Department of Agriculture supports S. 2546. He pointed out that the Federal Grain Inspection Service recovers, from the users of the official grain inspection and weighing services, the full cost of providing these services. This policy, adopted in 1981, has reduced Federal outlays from approximately $24 million in fiscal year 1981 to approximately $6.9 million for the current fiscal year—a saving of nearly $17.1 million.

Dr. Gilles proposed that the 35 percent limitation on administrative and supervisory costs be eliminated in order to permit more effective management of resources, tuned to long-term consideration of grain marketing needs. He pointed out that, while administrative costs were not expected to substantially exceed 35 percent, if this does occur, highly trained employees may have to be discharged only to be rehired again.

Dr. Gilles also testified (1) that the Federal Grain Inspection Service has shifted emphasis from a headquarter-centered program to one that is field-based in order to reduce costs, (2) that certain rules and regulations have been rescinded in order to improve services, and (3) as to the financial management of the Service, there had been a reduction in the number of quality and weighing complaints from foreign countries, and improved safety in the United States grain industry.

During questioning, it was pointed out that the Department of Agriculture had requested only a four year reauthorization, so that the user fee program can be reviewed periodically. Senator Andrews asked why the Deparment of Agriculture opposed the 35 percent cap on administrative costs. Dr. Gilles responded that the cap has caused problems since there are certain fixed costs and, as exports go down, the percentage of those fixed costs, relative to the total costs, increases. Dr. Gilles mentioned that, if Congress could not agree to eliminate the cap, the Department of Agriculture would prefer to see the cap increased. Senator Andrews pointed out that the cap was imposed by Congress to ensure cost-effectiveness in connection with administrative and supervisory operations.

Senator Andrews also asked for the Department of Agriculture's position on the issue of granting the Federal Grain Inspection Service investment authority for the user-fee operating balances. Dr. Gilles responded that the Department of Agriculture had no position on that issue.

The Subcommittee next heard from a panel of industry witnesses, Mr. T. L. Irmen testified on behalf of the National Grain and Feed Association, an Mr. Roger Larkin testified on behalf of the National Grain Trade Council.

Mr. Irmen stated that the National Grain and Feed Association urges Congress to retain a limitation on the administrative and supervisory costs of the Federal Grain Inspection Service. He recommended that the current cap be increased from 35 percent of overall costs to 40 percent. Mr. Irmen also testified that the National Grain and Feed Association recommends that Congress allow the investment of user fee moneys in interest-bearing accounts to help pay for the services rendered under the Act. He also testified that Congress should reaffirm its intent that the Federal Grain Inspection Service have a constructive, meaningful Advisory Committee.

On behalf of the National Grain Trade Council, Mr. Larkin presented testimony opposing the elimination of the 35 percent spending limitation on administrative and supervisory costs. He stated that the Council would not oppose increasing the cap to 40 percent of overall costs. Mr. Larkin also stated that the National Grain Trade Council strongly supported the current Federal Grain Inspection Service Advisory Committee.

During questioning, both witnesses stressed the urgency of passing S. 2546 in order to maintain efficiency in the national grain inspection and weighing system and to maintain the quality of grain exported from the United States. Both Mr. Larkin and Mr. Irmen praised the performance of the Federal Grain Inspection Service over the last 3 years.

COMMITTEE MARKUP

On September 13, 1984, the Committee met in open session and considered legislation to extend the authority under which fees are collected for the inspection and weighing of grain.

Senator Andrews stated that the Administrator of the Federal Grain Service had proposed the establishement of a new classificaiton of wheat, designated "Red Wheat", and that several wheat producing groups objected to the establishment of this classification. Senator Andrews then noted that the House version of S. 2546 (H.R. 5221) contained language prohibiting the Secretary of Agriculture from establishing this new class of wheat and asked that the Committee report either (1) the House bill without amendment, or (2) the Senate bill (S. 2546) with an amendment adding the prohibition to the Senate bill.

The Committee considered Senator Andrews' request and, by voice vote, ordered that the House bill, H.R. 5221, be reported to the Senate with a recommendation that it pass.

SECTION-BY-SECTION ANALYSIS

Extension of certain 1981 Reconciliation Act provisions

Section 1 of the bill would amend section 155 of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 371) to extend for 4 years (through September 30, 1988) the amendments made by that section to the United States Grain Standards Act. Section 155 amended or added the following provisions of the United States Grain Standards Act:

(1) sections 7(j) and 7A(l) relating to authority of the Federal Grain Inspection Service to collect fees for the inspection and weighing of grain, including supervisory and administrative costs;

(2) new section 7C imposing a cap on the total administrative and supervisory costs that may be incurred under the Act for inspection and weighing services;

(3) section 19 authorizing appropriations to carry out the Act to the extent that financing is not obtained from user fees and sales of samples; and

(4) new section 20 requiring the Secretary of Agriculture to establish an advisory committee to advise the Administrator of the Federal Grain Inspection Service as to the efficient and economical implementation of the Act.

Investment of Federal Grain Inspection Service income

Section 2(1) of the bill, effective for the period beginning with the date of enactment and ending September 30, 1988, would amend section 7(j) of the United States Grain Standards Act to give the Secretary of Agriculture authority to (i) invest fee income, as well as income from late payment penalties and the sale of samples that is collected or received by the Administrator of the Federal Grain Inspection Service, in insured or fully collateralized, interest-bearing accounts or (ii) request that the Secretary of the Treasury invest this income in United States Government debt instruments. The interest earned on such sums and any late payment penalties

collected by the Administrator would be credited to the user-fee fund and be available without fiscal year limitation to pay the expenses incurred by the Federal Grain Inspection Service in providing services under the Act.

Limitation on Federal Grain Inspection Service administrative costs

Section 2(2) of the bill, effective for the period beginning with the date of enactment of the bill and ending September 30, 1988, would amend section 7C of the United States Grain Standards Act to raise the limitation on administrative and supervisory costs (excluding standardization, compliance, and foreign monitoring activities) from 35 to 40 percent for each of the fiscal years 1985 through 1988.

Under current law, the total administrative and supervisory costs that may be incurred by the Federal Grain Inspection Service for inspection and weighing (excluding standardization, compliance, and foreign monitoring activities) in a fiscal year may not exceed 35 percent of the total cost of the agency's inspection and weighing activities for that fiscal year.

Authorization for appropriations

Section 2(3) of the bill would amend section 19 of the United States Grain Standards Act to extend for 4 years (through September 30, 1988) the authorization for appropriation of such sums as are necessary to carry out the provisions of such Act, to the extent that financing is not obtained through fees, late payment charges, sales of samples, and interest.

Wheat class

Section 3 of the bill provides that the Secretary of Agriculture shall not establish a new class of wheat, designated "Red Wheat", as proposed in an official announcement appearing in volume 49 of the Federal Register (pages 1730–35) dated January 13, 1984. By notice published in the Federal Register on May 16, 1984, the Administrator of the Federal Grain Inspection Service announced his decision not to establish such a new class of wheat.

Administration views

On March 12, 1984, the Committee received a letter from Deputy Secretary of Agriculture Richard E. Lyng expressing the Department's views on S. 2546, the Senate companion bill to H.R. 5221. The letter follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, March 12, 1984.

Hon. GEORGE BUSH,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: We submit herewith for the consideration of the Congress, a draft bill "to extend through September 30, 1988, the period during which amendments to the United States Grain Standards Act contained in Section 155 of the Omnibus Budget

Reconciliation Act of 1981 remain effective, and for other purposes."

The amendments in the Omibus Budget Reconciliation Act, effective for the period October 1, 1981, through September 30, 1984, required collection of user fees to cover administrative and supervisory costs related to official grain inspection and weighing, imposed a 35 percent limitation on administrative and supervisory costs, authorized appropriations for standardization, compliance, and foreign monitoring activities, and required establishment of an advisory committee. The amendments enabled the Federal Grain Inspection Service (FGIS) to facilitate the orderly and timely marketing of grain in carrying out its responsibilities to provide for the establishment of official United States standards for grain, to promote the uniform application thereof by official inspection personnel, and to regulate the weighing and certification of the weight of grain.

With the implementation of these user fees and input by the Advisory Committee, the FGIS programs have been more aggressively managed. This has resulted in increased efficiency of program administration and a more cost-effective delivery of program services. During the past 2 fiscal years, staff has been reduced to less than 900 full-time permanent employees from approximately 1500 and total expenditures from $57.2 million to $38.6 million.

Although administrative costs have been substantially reduced, the 35 percent limitation presents problems in the effective management of the FGIS program. Since the volume of work varies seasonally, the fixed cost for specific periods can in fact exceed 35 percent. Because of the artificial cap, qualified personnel may be let go only to be hired again and retrained. This personnel practice is not cost-effective. Generally, administrative expenses are not expected to substantially exceed 35 percent during any period. Deletion of the cap should result in more efficient and effective resource management.

For these reasons, I am recommending that the amendments contained in the Omnibus Budget Reconciliation Act of 1981, except for the 35 percent limitation on administrative and supervisory costs, be continued for 4 years. Enactment of the enclosed draft bill will assure that the national inspection system will continue to be operated in a cost-effective manner in both the foreign and domestic markets.

The Office of Management and Budget advises that enactment of this legislation would be in accord with the Administration's program.

An identical letter has been sent to the Speaker of the House of Representatives.

Sincerely,

RICHARD E. LYNG,
Deputy Secretary.

Enclosure.

A BILL To extend through September 30, 1988, the period during which amendments to the United States Grain Standards Act contained in Section 155 of the Omnibus Budget Reconciliation Act of 1981 remain effective, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 155 of the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 371, is amended by—

(1) deleting "Effective for the period October 1, 1981, through September 30, 1984, inclusive, the United States Grain Standards Act is amended by—", and inserting in lieu thereof, "Effective for the period October 1, 1981 through September 30, 1988, inclusive, the United States Grain Standards Act is amended by—";

(2) deleting paragraph (3) thereof which reads:

"(3) adding a new section 7C as follows:

"LIMITATION ON ADMINISTRATIVE AND SUPERVISORY COSTS

"SEC. 7C. The total administrative and supervisory costs which may be incurred under this Act for inspection and weighing (excluding standardization, compliance, and foreign monitoring activities) for each of the fiscal years 1982 through 1984 shall not exceed 35 per centum of the total costs for such activities carried out by the Service for such year.' ";

(3) renumbering paragraphs (4) and (5), respectively, as paragraphs (3) and (4); and

(4) amending paragraph (3), as so renumbered, by deleting "during the period beginning October 1, 1981, and ending September 30, 1984", and inserting in lieu thereof "during the period beginning October 1, 1981, and ending September 30, 1988".

COST ESTIMATE

I.

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that the following cost will be incurred by the Federal Government as a result of the enactment of the bill.

	Millions
Estimated authorization level/budget authority:	
Fiscal year:	
1985	-$12
1986	-13
1987	-14
1988	-14
Estimated outlays:	
Fiscal year:	
1985	-12
1986	-13
1987	-14
1988	-14

II.

The Committee's estimate of the cost of the bill is consistent with a cost estimate that was prepared by the Congressional Budget Office. The Congressional Budget Office estimate is contained in a letter transmitted to Chairman Helms that reads as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 1984.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate for H.R. 5221, a bill to extend through September 30, 1988, the period during which amendments to the United States Grain Standards Act contained in section 155 of the Omnibus Budget Reconciliation Act of 1981 remain effective, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5221.

2. Bill title: A bill to extend through September 30, 1988, the period during which amendments to the United States Grain Standards Act contained in section 155 of the Omnibus Budget Reconciliation Act of 1981 remain effective, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Agriculture, Nutrition and Forestry, September 13, 1984.

4. Bill purpose: This bill would extend the authority for the Secretary of Agriculture to collect user fees for the administration and supervision of grain inspection and weighing services carried out by the Federal Grain Inspection Service under the United States Grain Standards Act. This bill would also allow user fees collected to be deposited in interest-bearing accounts, increase the limit on administrative and supervisory expenses incurred for inspection and weighing services from 35 percent to 40 percent of total expenses, extend the authorization for appropriations for activities not covered by user fees and other collections through fiscal year 1988, and prohibit the Secretary of Agriculture from establishing a proposed new class of wheat.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1985	1986	1987	1988	1989
Estimated budget authority	−12	−13	−14	−14	
Estimated outlays	−12	−13	−14	−14	

The costs of this bill fall within budget functions 350 and 900.

Basis of estimate: Two provisions of the bill would have a net effect on federal spending. The first is the provision that would reauthorize the collection of user fees necessary to carry out Federal Grain Inspection Service activities for which funding is already authorized.

All except $0.3 million of the estimated budget authority and outlays shown above for fiscal years 1985 through 1988 is due to the extension of these fees. The estimated amounts reflect projected collections of about $12 million in fiscal year 1984, increasing to $15 million by 1988.

The second provision affecting spending is that which would allow the balances in the user fee revolving fund to be invested in interest-bearing accounts. Based on information from the Department of Agriculture, the average balance in the fund is expected to be about $3 million. As a result, interest received and credited to the fund would total $0.3 million annually. It is expected that user fees would be reduced to offset this new source of income to the fund and maintain the normal fund balance. The cost of the federal government from this provision would result from increased costs of Treasury borrowing due to the loss of the interest-free fund balance it currently holds.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 14, 1984, the Congressional Budget Office prepared a cost estimate for H.R. 5221, as ordered reported by the Senate Committee on Agriculture, Nutrition and Forestry on September 13, 1984. This estimate supersedes the previous one, which overstated the additoinal receipts exclusively for administration and supervision that would accrue to the government as a result of this bill.

9. Estimate prepared by: Roger E. Hitchner and Howard Conley.

10 Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.1

Regulatory Impact Statement

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact that would result from enactment of H.R. 5221.

Section 1 of the bill extends the authority (through September 30, 1988) under which the Federal Grain Inspection Service collects fees for the supervision of the inspection and weighing of grain. Section 2 of the bill authorizes the investment of the income from (1) the fees that are collected and (2) from penalties and the sale of samples in interest bearing accounts. Section 3 of the bill prohibits the Secretary of Agriculture from establishing a classification of wheat designated as "Red Wheat".

This bill is not a regulatory measure in the sense of imposing Government-established standards on private individuals or corporations. The bill does extend through September 30, 1988, the authority of the Federal Grain Inspection Service to charge fees for the supervision of the inspection and weighing of grain. This does

impact on private individuals and corporations in that they will have to pay for supervision of the inspection and weighing services that they are required to use. Federal law requires that all grain shipped to any destination outside the United States be officially inspected and weighed. Thus, those private individuals and corporations engaged in the shipment of grain outside the United States will be required to pay for inspection and weighing services required by the Federal Government. These entities, however, may reap benefit from the inspection and weighing services, since the services help to ensure that a full-measure, quality product is delivered to their customers. There are no similar inspection and weighing requirements for grain shipped within the United States.

The Federal Grain Inspection Service charges a basic inspection and weighing fee of $25 per hour for contract work performed by FGIS personnel and $30.40 per hour for noncontract work performed by these personnel. The fees are billed in quarter hour increments. The agency also charges fees for supervising the inspection and weighing activities of delegated States and designated agencies. These fees range from $.50 for the inspection or weighing of a truck trailer to $82 for the inspection or weighing of a ship's cargo. In view of the value of the commodity transported in these conveyances, these supervisory charges will not have a material impact on producers, millers, grain exporters, or consumers.

The income earned by the Federal Grain Inspection Service through user fees and charges has a material impact on the need for taxpayer support of that agency. In 1982, the Federal Grain Inspection Service paid 89 percent of its cost of operation through user fees and charges. In 1983, the figure was 87 percent.

In fiscal year 1983, the Federal Grain Inspection Service earned approximately $32 million from its inspection and weighing program. Since the agency's expenses are also paid from these funds, it is difficult to calculate the average balance in the agency's account. If, however, the average balance is $3 million and the interest rate is 8.5 percent, the fund would earn $255,000 over a 12-month period as a result of the investment provision. This $255,000 can be used to defray the agency's cost of operation and further lessen the agency's need for appropriated funds.

The bill will not have any impact on the personal privacy of those individuals affected by the continued imposition of the user fees and charges, nor will the bill increase bookkeeping or paperwork obligations for these persons. Some additional bookkeeping will be required of the Secretary in connection with the exercise of his investment authority under the bill, but the gain in interest income to the Federal Grain Inspection Service will more than offset the cost.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OMNIBUS BUDGET RECONCILIATION ACT OF 1981

* * * * * * *

GRAIN INSPECTION AND WEIGHING

SEC. 155. [Effective for the period October 1, 1981, through September 30, 1984, inclusive,] *Effective for the period beginning October 1, 1981, and ending September 30, 1988,* the United States Grain Standards Act is amended by—* * *

UNITED STATES GRAIN STANDARDS ACT

* * * * * * *

SEC. 7. * * *

(j)(1) The Administrator shall, under such regulations as the Administrator may prescribe, charge and collect reasonable inspection fees to cover the estimated cost to the Service incident to the performance of official inspection except when the official inspection is performed by a designated official agency or by a State under a delegation of authority. The fees authorized by this subsection shall, as nearly as practicable and after taking into consideration any proceeds from the sale of samples, cover the costs of the Service incident to its performance of official inspection services in the United States and on United States grain in Canadian ports, including administrative and supervisory costs related to such official inspection of grain. Such fees, and the proceeds from the sale of samples obtained for purposes of official inspection which become the property of the United States, shall be deposited into a fund which shall be available without fiscal year limitation for the expenses of the Service incident to providing services under this Act.

(2) Each designated official agency and each State agency to which authority has been delegated under subsection (e) of this section shall pay to the Administrator fees in such amount as the Administrator determines fair and reasonable and as will cover the estimated costs incurred by the Service relating to supervision of official agency personnel and supervision by Service personnel of its field office personnel, except costs incurred under paragraph (3) of subsection (g) of this section and sections 9, 10, and 14 of this Act. The fees shall be payable after the services are performed at such times as specified by the Administrator and shall be deposited in the fund created in paragraph (1) of this subsection. Failure to pay the fee within thirty days after it is due shall result in automatic termination of the delegation or designation, which shall be reinstated upon payment, within such period as specified by the Administrator, of the fee currently due plus interest and any further expenses incurred by the Service because of such termination. The interest rate on overdue fees shall be as prescribed by the Secretary, but not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturity, plus an additional charge of not to exceed 1 per centum per annum as determined by the Secretary and adjusted to the nearest one-eighth of 1 per centum.

(3) Any sums collected or received by the Administrator under this Act and deposited to the fund created in paragraph (1) of this subsection and any late payment penalties collected by the Administrator and credited to such fund may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. The interest earned on such sums and any late payment penalties collected by the Administrator shall be credited to the fund and shall be available without fiscal year limitation for the expenses of the Service incident to providing services under this Act.[1]

* * * * * * *

LIMITATION ON ADMINISTRATIVE AND SUPERVISORY COSTS

SEC. 7C. The total administrative and supervisory costs which may be incurred under this Act for inspection and weighing (excluding standardization, compliance, and foreign monitoring activities) for each of the fiscal years 1982 through 1984 shall not exceed 35 per centum, *and for each of the fiscal years 1985 through 1988 shall not exceed 40 per centum,*[1] of the total costs for such activities carried out by the Service for such year.

* * * * * * *

APPROPRIATIONS

SEC. 19. There are hereby authorized to be appropriated such sums as are necessary for standardization and compliance activities, monitoring in foreign ports grain officially inspected and weighed under this Act, and any other expenses necessary to carry out the provisions of this Act for each of the fiscal years [during the period beginning October 1, 1981, and ending September 30, 1984] *during the period beginning October 1, 1981, and ending September 30, 1988*[1], to the extent that financing is not obtained from fees and sales of samples as provided for in sections 7, 7A, and 17A of this Act.

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[1] Effective for the period beginning with the date of enactment of the bill and ending Sept. 30, 1988.

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